

## Memorandum of Incorporation

**In this Memorandum of Incorporation, unless the context clearly indicates a contrary intention, an expression that denotes –**

- the masculine gender only, shall include the feminine gender;
- the singular, shall include the plural; and
- a natural person, shall include an artificial or juristic person.

### 1. DEFINITIONS

1.1 The following words shall, unless the context otherwise requires, have the meanings hereinafter assigned to them:

1.1.1 “the Act” means the Companies Act 71 of 2008 as amended from time to time;

1.1.2 “Auditors” means the auditors appointed by the Company from time to time;

1.1.3 “Board” means the Board of Directors of the Company from time to time;

1.1.4 “Chairman” means the chairman of the Board of Directors, elected in accordance with this Memorandum of Incorporation or if that expression is used with reference to a general meeting or meeting of the Directors at which that person is not present or does not act as chairman, the person acting as chairman in accordance with the provisions of this Memorandum of Incorporation;

1.1.5 “Company” means Olivedale Home Owners Association;

- 1.1.6 “Common Property” will have the meaning as ascribed thereto in the Sectional Titles Act in respect of the Property;
- 1.1.7 “the Developer” means Wilcoprop 202 (Pty) Ltd, Registration Number: 2002/030772/07;
- 1.1.8 “Development Period” means the period as from date of opening of a sectional title register for the Housing Development Scheme up until the date that the last Unit has been transferred by the Developer to a third party, either with regard to this development or as extended by the Developer in terms of any real right that might be reserved by the Seller in terms of the conditions of Section 25 of the Sectional Titles Act or alternatively until the Developer notifies the Company that the development of the Housing Development has been completed, whichever event occurs first;
- 1.1.9 “Directors” means the Directors of the Company who, for the purposes of the Act, shall be the Directors of the Company appointed or elected in terms of Article 6 of this Memorandum of Incorporation;
- 1.1.10 “Exclusive Use Area” will have the meaning ascribed to it in the Sectional Titles Act;
- 1.1.11 “Housing Development Scheme” means the sectional title scheme known as Olivedale Home Owners Association being erected by the Developer on the Property;
- 1.1.12 “Managing Agent” means any person or body appointed by the Company as an independent contractor to undertake any of the functions of the Company;
- 1.1.13 “Member” means a member of the Company as set out herein;

- 1.1.14 “Memorandum of Incorporation” means the memorandum of incorporation of the Company for the purposes of Section 15 of the Act;
- 1.1.15 “Owners” means a person referred to in article 4.8.2.1 and 4.8.2.2 of this Memorandum of Incorporation who will also be a Member;
- 1.1.16 “Participation Quota” means the participation quota of any Member as shown on the sectional plan of the Housing Development Scheme;
- 1.1.17 “the Property” means the immovable property described as Portion 35 of the Farm Olivedale 197, Registration Division IQ Gauteng, on which the Units are to be developed and any additional extensions as may be proclaimed by the Developer in terms of any real right that may be reserved by the Seller in terms of the revisions of Section 25 of the Sectional Titles Act, during the Development Period;
- 1.1.18 “Registered Mortgagee” means any mortgagee of whom the Company has been notified in writing;
- 1.1.19 “Sectional Titles Act” means the Sectional Title Act 95 of 1986, as amended from time to time;
- 1.1.20 “Unit” means any Sectional Title unit to be developed on the Property in terms of the Sectional Titles Act;
- 1.1.21 “Vice-Chairman” means the vice-chairman of the Board of Directors;
- 1.1.22 “in writing” means written, printed or lithographed or partly one and partly another, and other modes of representing or producing words in a visible form;

- 1.2 A section by number refers to the corresponding section of the Act;
- 1.3 Words that are defined in the Act bear the same meaning in this Memorandum of Incorporation as in the Act.

## **2. COMPANY ADMINISTRATION**

### **2.1 Incorporation**

2.1.1 The Company is incorporated as a Non-Profit Company as defined in the Act and is governed by:

2.1.1.1 The unalterable provisions of the Act; and

2.1.1.2 The alterable provisions of the Act, subject to the limitations, extensions, variations or substitutions set out in this Memorandum of Incorporation; and

2.1.1.3 The provisions of this Memorandum of Incorporation.

### **2.2 Objects and Powers of the Company**

2.2.1 The main object of the Company is to take over from the body corporate established in terms of the Sectional Titles Act for the Housing Development Scheme all powers, rights and duties as determined in the Sectional Titles Act and to carry on the business of the said body corporate of controlling and managing the Common Property, common facilities and amenities in respect of the Housing Development Scheme, being a retirement village and to promote, advance, maintain and protect the communal interest of the Owners/Members and occupiers of the Units and in particular, on so promoting such communal interest, to maintain and administer the communal financial interest and obligations of such Owners/Members and occupiers, to repair and maintain the

landscaping of the private open spaces and parks and the security fence of the Housing Development Scheme and to repair and maintain the entrance gates, internal meter boxes, street lighting, connections to electric and electronic services, ensure acceptable aesthetic, architectural and environmental Standards in the said Housing Development Schemes, and to repair and maintain all internal civil and internal electrical services.

2.2.2 Ancillary to the objects referred to above, the Company will also have the following objects:

2.2.2.1 to establish, for administrative expenses, a fund sufficient in the opinion of the Company for the repair, upkeep, control, management and administration of the Common Property (including reasonable provision for future maintenance and repairs), for the payment of rates and taxes and other local authority charges, for the supply of electric current, gas, water, fuel and sanitary and other services to the building or buildings and land, and any insurance premiums, and for the discharge of any duty or fulfilment of any other obligation of the Company;

2.2.2.2 to require the Members, whenever necessary, to make contributions to such fund for the purposes of satisfying any claims against the Company: Provided that the Company shall require the Member or Members of a Unit or Units entitled to the right to the exclusive use of a part or parts of the Common Property, to make such additional contribution to the fund as is deemed necessary to defray the costs of rates and taxes, insurance and maintenance in respect of any such part or parts, including the provision of electricity and water,

unless, in terms of the rules, the Members concerned are responsible for such costs;

- 2.2.2.3 to require from a Developer who is entitled to extend the scheme in terms of a right reserved in Section 25(1) of the Sectional Titles Act, to make such reasonable additional contribution to the fund as may be necessary to defray the cost of rates and taxes, insurance and maintenance of the part or parts of the Common Property affected by the reservation, including a contribution for the provision of electricity and water and other expenses and costs in respect of and attributable to the relevant part or parts;
- 2.2.2.4 to determine from time to time the amounts to be raised for the purposes aforesaid;
- 2.2.2.5 to raise the amounts so determined by levying contributions on the Members in proportion to their Participation Quotas;
- 2.2.2.6 to open and operate an account or accounts with a banking institution;
- 2.2.2.7 to insure the building or buildings and keep it or them insured to the replacement value thereof against fire and such other risks as may be prescribed;
- 2.2.2.8 to insure against such other risks as the Members may by special resolution determine;
- 2.2.2.9 subject to the provisions of Section 48 of the Sectional Titles Act and to the rights of the holder of any sectional mortgage bond, forthwith to apply any insurance money

received by it in respect of damage to the building or buildings, in rebuilding and reinstating the building or buildings in so far as this may be effected;

2.2.2.10 to pay the premiums on any insurance policy effected by it;

2.2.2.11 to properly maintain the Common Property (including elevators) and to keep it in a state of good and serviceable repair;

2.2.2.12 to comply with any notice or order by any competent authority requiring any repairs to or work in respect of the relevant land or building or buildings;

2.2.2.13 to notify the Registrar of Deeds as defined in the Deed Registry Act and the local authority concerned of its domicilium citandi et executandi, which shall be its address for service of any process;

2.2.2.14 to ensure compliance with any law relating to the Common Property or to any improvement of land comprised in the Common Property;

2.2.2.15 to keep in a state of good and serviceable repair and properly maintain the plant, machinery, fixtures and fittings used in connection with the Common Property and sections;

2.2.2.16 subject to the rights of the local authority concerned, to maintain and repair (including renewal where reasonably necessary) pipes, wires, cables and ducts existing on the land and capable of being used in connection with the enjoyment of more than one section or of the

Common Property or in favour of one section over the Common Property;

- 2.2.2.17 to make a frail care centre available in the housing development scheme, which frail care centre shall be managed by the service providers to be managed by the Company, but initially appointed by the Developer for the Development Period;
  - 2.2.2.18 on the written request of any Member or Registered Mortgagee of a section, to produce to such Member or mortgagee, or any person authorised in writing by such Member or mortgagee, the insurance policy or policies effected by the Company and the receipt or receipts for the last premium or premiums in respect thereof; and
  - 2.2.2.19 in general, to control, manage and administer the Common Property for the benefit of all Members.
  - 2.2.2.20 to establish and manage a kitchen facility for the Housing Development Scheme, and to require from Owners, with the exception of the Developer, to pay an additional levy for a number of compulsory meals per month at a levy to be determined by the Directors from time to time.
- 2.2.3 The Company may exercise the powers conferred upon it by or under the Act or this Memorandum of Incorporation, and such powers shall include the power:
- 2.2.3.1 to appoint such agents and employees as it may deem fit;



- 2.2.3.2 when essential for the proper fulfilment of its duties, to purchase or otherwise acquire, take transfer of, mortgage, sell, give transfer of, or hire or let Units;
- 2.2.3.3 to purchase, hire or otherwise acquire movable property for the use of Members for their enjoyment or protection, or in connection with the enjoyment or protection of the Common Property;
- 2.2.3.4 where practicable, to establish and maintain on the Common Property suitable lawns and gardens and recreation facilities;
- 2.2.3.5 to borrow moneys required by it in the performance of its functions or the exercise of its powers;
- 2.2.3.6 to secure the repayment of moneys borrowed by it and the payment of interest thereon, by negotiable instrument or the hypothecation of unpaid contributions (whether levied or not), or by mortgaging any property vested in it;
- 2.2.3.7 to invest any moneys of the fund created in terms of this Memorandum of Incorporation;
- 2.2.3.8 to enter into an agreement with the local authority or any other person or body for the supply to the building or buildings and the land of electric current, gas, water, fuel and sanitary and other services;
- 2.2.3.9 to enter into an agreement with any Member or occupier of a Unit for the provision of amenities or services by the Company to such Unit or to the Member or occupier thereof, including the right to let a portion of the

Common Property to any such Member or occupier by means of a lease other than a lease contemplated in Section 17(1) of the Sectional Titles Act;

2.2.3.10 To establish and manage a frail care centre within the Housing Development Scheme;

2.2.3.11 to do all things reasonably necessary for obtaining the object of the Company and the enforcement of the Memorandum of Incorporation and any rules issued by the Directors in terms of the Memorandum of Incorporation and for the control, management and administration of the Common Property.

2.2.4 The Company is not subject to any provisions contemplated in Section 15(2)(b).

2.2.5 The purposes and powers of the Company are not subject to any restrictions, limitations or qualifications, as contemplated in Section 19(1)(b)(ii), and include such powers as referred to in Article 2.2.2.

2.2.6 Upon dissolution of the Company, its net assets must be distributed in the manner determined in accordance with Item 1(4)b of Schedule 2 of the Act.

## 2.3 **Memorandum of Incorporation and Company Rules**

2.3.1 This Memorandum of Incorporation of the Company may be altered or amended only in the manner set out in Sections 16, 17 or 152(6)(b);

## 2.3.2 Conduct Rules and Guidelines

The Board of Directors may make rules for the Company, as contemplated in Section 15(3) to (5) with regards to among others the following aspects, subject to any restriction imposed or direction given at a general meeting of the Company:

- 2.3.2.1 The design, development and aesthetic controls relating to improvements on the Common Property of the Housing Development Scheme as well as landscaping, control, use, safety and cleanliness of the Housing Development Scheme;
- 2.3.2.2 The preservation of the environment including the right to control vegetation and the right to prohibit and/or control the erection of satellite and amateur radio antennae/dishes/receivers, whether upon or within the boundaries of any Unit;
- 2.3.2.3 The security, vegetation, continuity, parking, signage and advertising, exterior finishes, and maintenance of any Unit or building on the Property;
- 2.3.2.4 The right to prohibit, restrict or control the keeping of any animal, bird or fish which they may regard as dangerous, obnoxious or a nuisance;
- 2.3.2.5 The placing or affixing of ornamentation or embellishments to the outside of buildings, including the power to remove, or order the removal, or to procure an order for removal of any such objects;
- 2.3.2.6 The conduct of any person or persons within the Housing Development Scheme for the preservation of

peace and tranquillity and the prevention of nuisance of any nature to any Member;

- 2.3.2.7 The furtherance and promotion of any of the objects of the Company and/or for the better management of the affairs of the Company and/or for the advancement of the interests of Members;
  - 2.3.2.8 The maintenance of all roads, pavements, buildings, outbuildings, structures, electricity, water and sewerage reticulation, improvements of any nature and landscaping on the Unit;
  - 2.3.2.9 The right of reasonable access to any Unit in order to affect the maintenance of any matters referred to in this Memorandum of Incorporation;
  - 2.3.2.10 The conditions for the use of all or certain parts of the Common Property, such as streets and other open spaces;
  - 2.3.2.11 The restriction on domestic workers and other employees' movements on the Property;
  - 2.3.2.12 The process to be followed regarding internal dispute resolution between Members in disputes regarding the Company or the Common Property.
- 2.3.3 Annexure "A" to the Memorandum of Incorporation includes the conduct rules and guidelines in place as from date of incorporation of the Company, which conduct rules and guidelines may be amended or repealed by the Directors in terms of this Article 2.3.

- 2.3.4 For the enforcement of any of the rules made by the Directors in terms hereof, the Directors may:
- 2.3.4.1 give notice to the Member concerned requiring him to remedy such breach within such period as the Directors may determine;
  - 2.3.4.2 in the event that a Member does not remedy his breach after the receipt of a notice in terms of Article 2.3.4.1 above, take or cause to be taken such steps as they may consider necessary to remedy the breach of the rule of which the Member may be guilty, and debit the costs of so doing to the Member concerned, which amount shall be deemed to be a debt owing by the Member concerned to the Company; and/or
  - 2.3.4.3 impose a system of fines or other penalties, a list of which will be available at the office of the Company at all times. The amounts of such fines shall be reviewed and confirmed at each Annual General Meeting of the Company; and/or
  - 2.3.4.4 take such other action including proceedings in Court, as they may deem fit.
- 2.3.5 In the event of the Directors' instituting any legal proceedings against any Member or resident of a Unit for the enforcement of any of the rights of the Company in terms hereof, the Company shall be entitled to recover all legal costs so incurred from the Member concerned, calculated as between attorney and client.
- 2.3.6 In the event of any breach of the rules by a Member or his guests or lessees, such breach shall be deemed to have been committed by the Member himself, but without prejudice to the foregoing, the

Directors may take or cause to be taken steps against the person actually committing the breach as they in their discretion may deem fit.

- 2.3.7 In the event of any Member disputing the fact that he has committed a breach of any of the rules, a committee of 3 (three) Directors appointed by the Chairman for that purpose shall adjudicate upon the issue at such time and in such manner and according to such procedure (provided that natural justice shall be observed) as the Chairman may direct.
- 2.3.8 Any fine imposed upon any Member shall be deemed to be a debt due by the member to the Company and shall be recoverable by ordinary civil process.
- 2.3.9 Notwithstanding anything to the contrary herein, the Directors may in the name of the Company enforce the provisions of any rules by civil application or action in a court of competent jurisdiction and for this purpose may appoint such attorneys and counsel as they may deem fit.
- 2.3.10 The Company may in a general meeting itself make any rules which the Directors may make in terms of Article 2.3.2 and may in a general meeting vary or modify any rules made by it or by the Directors from time to time.
- 2.3.11 The Board of Directors must publish any rules made in terms of Sections 15(3) to (5) by delivering a copy of those rules to each Member by ordinary mail or by hand, or which rules will be made available to all Members and will be available at the office of the Company at all times. All rules made by the Board of Directors must be ratified by the Members of the Company at the general meeting following the delivery of the rules to the Members in terms of this Article 2.3.10.

2.3.12 The Company must publish a notice of any alteration of the Memorandum of Incorporation or the rules, made in terms of Section (17)(1) and this Article 2.3 by delivering a copy of those rules to each Member by ordinary mail, by e-mail or by hand.

### **3. APPLICATION OF OPTIONAL PROVISIONS OF THE COMPANIES ACT, 2008**

3.1 The Company will appoint an Auditor but does not elect, in terms of Section 34(2), to appoint a company secretary or an audit committee.

3.2 The Company does not elect, in terms of section 118(c)(ii), to submit voluntarily to the provisions of Parts B and C of Chapter 5 of the Act and the Takeover Regulations provided for in the Act.

### **4. MEMBERS**

#### **4.1 Members' right to information**

A Member has the rights to access information set out in Section 26(1).

#### **4.2 Members' authority to act**

If, at any time, every Member of the Company is also a Director of the Company, as contemplated in Section 57(4), the authority of the Members to act without notice or compliance with any other internal formalities as set out in that Section 57(4), is not limited by this Memorandum of Incorporation.

#### **4.3 Representation by concurrent proxies**

The right of a Member of the Company to appoint two or more persons concurrently as proxies as set out in Section 58(3)(a) is not limited or restricted by this Memorandum of Incorporation.

#### 4.4 **Authority of proxy to delegate**

The authority of a Member's proxy to delegate the proxy's powers to another person as set out in Section 58(3)(b) is not limited or restricted by this Memorandum of Incorporation.

#### 4.5 **Requirement to deliver proxy instrument to the Company**

The requirement that a Member must deliver to the Company a copy of the instrument appointing the proxy before that proxy may exercise the Member's rights at a Members' meeting as set out in Section 58(3)(c) is not varied by this Memorandum of Incorporation.

#### 4.6 **Deliberative authority of proxy**

The authority of a Member's proxy to decide without direction from the Member whether to exercise, or abstain from exercising, any voting right as set out in terms of Section 58(7), is not limited.

#### 4.7 **Record date for the exercise of Members' rights**

If, at any time, the Company's Board of Directors fails to determine a record date, as contemplated in Section 59, the record date for the relevant matter is to be determined by the Board of Directors in terms of Section 59(3).

#### 4.8 **Membership**

4.8.1 As contemplated in Item 4(1) of Schedule 2 of the Act, the Company is a non-profit company with Members in a single class, being voting Members, each of whom has an equal vote in any matter to be decided on by the Members of the Company.

4.8.2 The terms and conditions of membership in the Company are as follows:



- 4.8.2.1 the Developer in its capacity as such will be a Member (and represented by not more than 3 (three) nominees); and
  - 4.8.2.2 any other person who is in terms of the Deeds Registries Act reflected in the records of the Deeds Office as the registered owner of any Unit on the Property will be a Member.
- 4.8.3 Where any Unit is owned by more than one person, all the registered Owners of that Unit shall together be deemed to be one Member of the Company and have the rights and obligations of one Member of the Company; provided, however, that all co-owners of any Unit shall be jointly and severally liable for the due performance of any obligation to the Company.
- 4.8.4 A person signing an agreement or offer to purchase an Unit, will by signing such an agreement or offer to purchase apply to become a Member of the Company. Upon becoming a registered Owner of a Unit, such an application will be deemed to be successful, and the registered Owner will as from that date be a Member of the Company. When a Member ceases to be the owner of any such Unit he shall ipso facto cease to be a Member of the Company. The Owner will ensure that the purchase and sale agreement includes a provision in terms whereof the purchaser consents to become a Member of the Company by making written application for membership, to the Company.
- 4.8.5 A person or party taking transfer of more than one Unit will be able to exercise the same number of votes as the number of Units owned at that time by the person or party at meetings of the Company.

- 4.8.6 Resignation by the nominees of the Developer can be effected by means of a notice in writing at the registered office of the Company within 14 (fourteen) days after the Development Period, or, at the option of the nominee, as soon as 3 (three) persons have become Members in terms of Article 4.8.4.
- 4.8.7 No Member shall let or otherwise part with occupation of his Unit, whether temporarily or otherwise, unless he has agreed in writing with the proposed occupier of such Unit as a *stipulatio alteri* in favour of the Company that such occupier shall be bound by all the terms and conditions of these presents, and such written agreement is lodged with the Company prior to the proposed occupier taking occupation of the Unit in question.
- 4.8.8 No registered Owner of a Unit may resign as a Member of the Company.
- 4.8.9 The rights and obligations of a Member shall not be transferable and every Member shall:
- 4.8.9.1 further to the best of his ability the objects and interests of the Company;
  - 4.8.9.2 observe all rules made by the Company or the Directors, provided that nothing contained in this Memorandum of Incorporation of the Company shall prevent a Member from ceding his rights in terms of this Memorandum of Incorporation as security to the mortgagee of the Member's Unit.

## 4.9 Duties of Members

### 4.9.1 Each Member shall:

- 4.9.1.1 permit any person authorised in writing by the Company, at all reasonable hours on notice (except in case of emergency, when no notice shall be required), to enter his Unit or Exclusive Use Area for the purposes of inspecting it and maintaining, repairing or renewing pipes, wires, cables and ducts existing in the Unit and capable of being used in connection with the enjoyment of any other section or Common Property, or for the purposes of ensuring that the provisions of the Act and the rules are being observed;
- 4.9.1.2 forthwith carry out all work that may be ordered by any competent public or local authority in respect of his Unit, other than such work as may be for the benefit of the building generally, and pay all charges, expenses and assessments that may be payable in respect of his Unit;
- 4.9.1.3 use and enjoy the Common Property in such a manner as not unreasonably to interfere with the use and enjoyment thereof by other Members or other persons lawfully on the premises;
- 4.9.1.4 not use his Unit or Exclusive Use Area, or permit it to be used, in such a manner or for such purpose as shall cause a nuisance to any occupier of a Unit;
- 4.9.1.5 notify the Company forthwith of any change of Membership in his section and of any mortgage or other dealing in connection with his Unit;

- 4.9.1.6 when the purpose for which a Unit or an Exclusive Use Area is intended to be used is shown expressly or by implication on or by a registered sectional plan, not use nor permit such Unit or Exclusive Use Area to be used for any other purpose: Provided that with the written consent of all Members such Unit or Exclusive Use Area may be used for another purpose;
- 4.9.1.7 abide by the Memorandum of Incorporation and adhere to the rules made by the Directors from time to time;
- 4.9.1.8 pay the levies instituted by the Directors in terms of Article 4.11 from time to time on due date;
- 4.9.1.9 maintain his Unit in a clean and tidy condition and adhere to the provisions and guidelines established by the Directors to the satisfaction of the Directors. Should the Directors be of the opinion that a Member is not complying with this Memorandum of Incorporation, the Directors shall give such Member reasonable notice, depending on the nature of the breach, within which to remedy the breach, failing which, where possible, the Directors shall be entitled to perform the work or services which is required to be done or provided (or to have it done) at the expense of the Member, and shall be entitled to recover all expenditure in connection thereof from the Member, together with interest calculated thereon at prime bank rate of a bank of the Directors' choice, plus 2% (two percent), for the period date of expenditure to date of repayment. The aforementioned amount shall be added to the Member's levy account;

- 4.9.1.10 use and enjoy the Properties they own and/or occupy as well as the public areas and open spaces in accordance with their own rights, but as curtailed by the rights of other Members or occupants;
  - 4.9.1.11 in the event where a Member sells his Unit, he will be obliged to inform the new purchaser of the Company and the new purchaser's obligations in terms of the Memorandum of Incorporation; and
  - 4.9.1.12 in the event where a Member sells his Unit, the Company will be entitled to 3,5% (three comma five per cent) realised by the Member on the sale of his Unit, which percentage will be placed in a fund to be created by the Directors for maintenance of the Housing Development Scheme, subject to the conditions provided in this Article 20.
- 4.9.2 In addition to his duties as set out above, a Member –
- 4.9.2.1 shall not use his Unit, Exclusive Use Area or any part of the Common Property, or permit it to be used, in such a manner or for such purpose as shall be injurious to the reputation of the building;
  - 4.9.2.2 shall not contravene, or permit the contravention of, any law, bylaw, ordinance, proclamation or statutory regulation, or the conditions of any license, relating to or affecting the occupation of the building or the Common Property, or the carrying on of business in the building, or so contravene or permit the contravention of the conditions of title applicable to his Unit or any other Unit or to his Exclusive Use Area or any other Exclusive Use Area;

- 4.9.2.3 shall not make alterations which are likely to impair the stability of the building or the use and enjoyment of other Units, the Common Property or any Exclusive Use Area;
- 4.9.2.4 shall not do anything to his Unit or Exclusive Use Area which is likely to prejudice the harmonious appearance of the building;
- 4.9.2.5 shall, when the purpose for which a Unit and Exclusive Use Area is intended to be used –
- 4.9.2.5.1 is shown expressly or by implication on a registered sectional plan;
  - 4.9.2.5.2 is shown expressly or by implication on the original approved building plan thereof;
  - 4.9.2.5.3 can be inferred from the provisions of the rules; or
  - 4.9.2.5.4 is obvious from its construction, layout and available amenities,
- not use, nor permit such Unit or Exclusive Use Area to be used, for any other purpose: Provided that with the written consent of all Members such Unit or Exclusive Use Area may be used for another purpose;
- 4.9.2.6 shall not construct or place any structure or building improvement on his Exclusive Use Area, without the prior written consent of the Directors, which shall not be unreasonably withheld, provided that the provisions of Section 24 and Section 25 or other relevant provisions of the Sectional Titles Act be not contravened; and

4.9.2.7 shall maintain the hot water installation which serves his Unit or, where such installation serves more than one Unit, the Members concerned shall maintain such installation on a pro rata basis, notwithstanding that such appliance is situated in part of the Common Property and is insured in terms of the policy taken out by the Company.

4.9.3 A Member who exercises his rights in terms of Section 60 (3) of the Sectional Titles Act shall bear all costs to give effect thereto.

#### 4.10 Member's failure to maintain

4.10.1 If a Member –

4.10.1.1 fails to repair or maintain his Unit in a state of good repair as required by this Memorandum of Incorporation;  
or

4.10.1.2 fails to maintain adequately any area of the Common Property allocated for his exclusive use and enjoyment,

and any such failure persists for a period of 30 (thirty) days after the giving of written notice to repair or maintain given by the Directors or the Managing Agent on their behalf, the Company shall be entitled to remedy the Member's failure and to recover the reasonable cost of doing so from such Member.

#### 4.11 Levies

4.11.1 The Directors may from time to time impose levies upon the Members for the purpose of meeting all the expenses which the Company has incurred or to which the Directors reasonably

anticipate the Company will be put in the attainment of its objects or the pursuit of its business.

- 4.11.2 Levies will however be limited to the object of the Company in pursuit of the business of the Company, as set out in the purpose described in the main business of the Company.
- 4.11.3 All Members will be liable for any levy imposed in terms of Article 4.11.1 from time to time, pro rata in accordance with their Participation Quota, and as determined by the Directors in respect of the kitchen facility as contemplated in Article 2.2.2.20.
- 4.11.4 The Directors shall within not less than 30 (thirty) days prior to the end of each financial year, prepare and serve upon every Member at the address chosen by him an estimate in reasonable detail of the amount which shall be required by the Company to meet the expenses during the following financial year, and shall specify separately such estimated deficiency, if any, as shall result from the preceding year. The Directors may include in such estimate an amount to be held in reserve to meet anticipated expenditure not of an annual nature.
- 4.11.5 Each notice to each Member shall specify the contribution payable by that Member to such expense and reserve fund.
- 4.11.6 Every levy shall be payable in equal monthly instalments as determined, due in advance on the first day of each and every month of each financial year.
- 4.11.7 In the event of the Directors' for any reason whatsoever failing to prepare and serve the estimate referred to in Article 4.11.4 above timeously, every Member shall until service of such estimate continue to pay the levy previously imposed and shall after such



service pay such levy as may be specified in the notice referred to in Article 4.11.4.

- 4.11.8 The Directors may from time to time impose special levies upon the Members when necessary in respect of all such expenses as are mentioned in Article 4.11.1 which were not included in any estimate made in terms of Article 4.11.4, and may in imposing such levies further determine the terms of payment thereof.
- 4.11.9 The Directors shall be empowered in addition to such other rights as the Company may have in law as against its Members to determine the rate of interest from time to time chargeable upon arrear levies, provided that such rate of interest shall not exceed the rate laid down in terms of the National Credit Act 34 of 2005.
- 4.11.10 Any amount due by a Member by way of levy and interest shall be a debt due by him to the Company. The obligation of a Member to pay a levy and interest shall cease upon his ceasing to be a Member, without prejudice to the Company's right to recover arrear levies and interest. No levy paid by a previous Member of the Company shall under any circumstances be repayable by the Company upon the Member ceasing to be a Member. A Member's successor in title to a Unit shall be liable as from the date upon which he becomes a Member pursuant to the transfer of that Unit, to pay the levy and interest thereon attributable to that Unit.
- 4.11.11 All levies shall be due and payable in advance by no later than the first day of each month.
- 4.11.12 A Member shall be liable to pay for any or all legal costs, including costs as between attorney and his own client, and collection commission expenses and charges incurred by the Company in obtaining the recovery of arrear levies or any other arrear amounts

due and owing by such Member to the Company, together with the interest thereon at the rate referred to in Article 4.11.9.

#### 4.12 Clearance Certificate

4.12.1 No Member shall transfer his Unit until the Board of Directors under the hand of one of the Directors has certified that the Member has at date of transfer fulfilled all his financial obligations to the Company. No Unit or any interest therein shall be alienated without the consent of the Company. Such consent shall not be withheld unless –

4.12.1.1 such Member is indebted to the Company in any way in respect of levies or other amounts which the Company may in terms of these presents be entitled to claim from him;

4.12.1.2 the proposed transferee has failed to agree to become a Member of the Company and to be bound by these presents; and

4.12.1.3 such a Member remains in breach of any of the provisions of these presents or any rules after notice from the Directors requiring him to remedy such breach.

4.12.2 The Directors, in issuing the certificate referred to in clause 4.12.1 above, shall be entitled to charge a reasonable fee for it to be determined by the Directors from time to time, subject to review by the Company in a general meeting.

4.12.3 The provisions of this Memorandum of Incorporation shall be binding upon all Members and insofar as they may be applicable to all persons occupying any Unit by, through or under any Member, whatever the nature of such occupation. No Member

shall let or otherwise part with occupation of a Unit without the consent of the Company, which consent shall only be withheld if the Company is not satisfied that the proposed occupier of the Unit has complied with the provisions of Article 4.8.4 of the Memorandum of Incorporation.

## **5. MEMBERS' MEETINGS**

### **5.1 General Meetings**

5.1.1 The Company shall within 18 (eighteen) months after incorporation of the Company and thereafter within 6 (six) months after the end of each financial year hold a general meeting in addition to any other general meetings during that year, and shall specify the meeting as such in the notices in terms of Article 5.4 below calling such meetings.

5.1.2 The abovementioned general meeting shall be called the Annual General Meeting. All other general meetings shall be called general meetings.

5.1.3 The agenda for the Annual General Meeting shall comprise at least the following:

5.1.3.1 The consideration, confirmation or variation of the insurances effected by the Developer or the Company;

5.1.3.2 the consideration, confirmation or variation of an itemised estimate of the anticipated income and expenses of the Company for the ensuing financial year;

5.1.3.3 the consideration and approval, with or without amendment, of the financial statements relating to the management, control and administration of the building

from date of establishment of the Company to the date of notice of the Annual General Meeting;

5.1.3.4 subject to Section 47 (2) of the Sectional Titles Act, the taking of cession of such contracts relating to the management, control and administration of the building as may have been entered into by the Developer for the continual management, control and administration of the building and the Property, and in respect of which the Developer shall be obliged to submit such contracts to the meeting;

5.1.3.5 the appointment of an auditor; and

5.1.3.6 the election of Directors.

## 5.2 **Members' right to demand a meeting**

Notwithstanding the provisions of Section 61(3), the right of Members to demand a meeting may be exercised by the holders of at least 10% (ten percent) of the voting rights entitled to be exercised in relation to the matter to be considered at the meeting.

## 5.3 **Location of Members' meetings**

The authority of the Company's Board of Directors to determine the location of any Members' meeting, and the authority of the Company to hold any such meeting in the Republic of South Africa or in any foreign country as set out in Section 61(9), is limited or restricted by this Memorandum of Incorporation to the extent that all meetings shall be held within the Republic of South Africa.

#### 5.4 **Notice of Members' meetings**

The minimum number of days for the Company to deliver notice of a Members' meeting to the Members, as required by Section 62, is as provided for in Section 62(1), being 15 (fifteen) business days.

#### 5.5 **Electronic participation in Members' meetings**

The authority of the Company to conduct a meeting entirely by electronic communication or to provide for participation in a meeting by electronic communication as set out in Section 63 is not limited or restricted by this Memorandum of Incorporation, as long as the electronic communication employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate reasonably effectively in the meeting.

#### 5.6 **Quorum for Members' meetings**

5.6.1 The quorum requirement for a Members' meeting to begin, or for a matter to be considered is 10% (ten percent) of the Members in person or by proxy.

5.6.2 If within thirty minutes after the appointed time for a meeting to begin, the required quorum has not been met, the periods allowed for postponement of the meeting in Section 64(4) and (5) apply to the Company without variation.

5.6.3 The authority of the meeting to continue or to consider a matter after the quorum has been met, provided that at least one Member remains present, as set out in Section 64(9), is not limited or restricted by this Memorandum of Incorporation.

## 5.7 Adjournment of members' meetings

5.7.1 The Chairman appointed in terms of this Article 6.5 will be authorised to adjourn a Members' meeting if a quorum has not been reached within one hour after the appointed time for the meeting to begin. Adjournment will take place as indicated in Section 64(4) to (13).

5.7.2 The maximum period allowable for an adjournment of a Members' meeting is 120 (one hundred and twenty) business days after the record date or 60 (sixty) business days after the date on which the adjournment occurred.

## 5.8 Members' resolutions

5.8.1 For an ordinary resolution to be adopted at a Members' meeting, it must be supported by at least 50% (fifty per cent) of the Members who voted on the resolution, as provided in Section 65(7).

5.8.2 For a special resolution to be adopted at a Members' meeting, it must be supported by at least 75% (seventy five per cent) of the Members who voted on the resolution, as provided in Section 65(7).

5.8.3 A special resolution adopted at a Members' meeting is not required for a matter to be determined by the Company, except for the following matters:

5.8.3.1 to amend the Company's Memorandum of Incorporation to the extent required by Section 16(1)(c) and Section 36(1)(b);

- 5.8.3.2 to ratify a consolidated revision of a Company's Memorandum of Incorporation, as contemplated in Section 18(1)(b);
- 5.8.3.3 to ratify actions by the Company or Directors in excess of their authority, as contemplated in Section 20(2);
- 5.8.3.4 to authorise the Board to grant financial assistance in the circumstances contemplated in Sections 44(3)(a)(ii) or 45(3)(a)(ii);
- 5.8.3.5 to authorise the basis for compensation paid to Directors of the Company, as required by Section 66(9);
- 5.8.3.6 to approve the voluntary winding-up in the circumstance contemplated in Section 80(1);
- 5.8.3.7 to approve the winding-up of the Company in the circumstances contemplated in Section 81(1);
- 5.8.3.8 to approve an application to transfer the registration of the Company to a foreign jurisdiction as contemplated in Section 82(5);
- 5.8.3.9 to approve any proposed fundamental transaction, to the extent required by Part A of Chapter 5 of the Act, subject to Schedule 1 of the Act;
- 5.8.3.10 to revoke a resolution contemplated in Section 164 (9)(c);
- 5.8.3.11 to insure the building or buildings within the Housing Development Scheme or any part of the Common

Property against such risks, not specified in this Memorandum of Incorporation; and

5.8.3.12 to remove the Managing Agent as contemplated in this Article 18.4.3;

5.8.4 The Chairman, if any of the Board of Directors shall preside as Chairman at every general meeting of the Company.

5.8.5 In the case of an equality of votes, whether on a show of hands or on a poll, the Chairman of the meeting at which the show of hands takes place, or at which the poll is demanded, shall not be entitled to a second or casting vote.

## 5.9 Votes of members

At every general meeting and Annual General Meeting:

5.9.1 the Developer shall have 500 (five hundred) votes in addition to the votes conferred upon it in terms of Article 5.9.2 below, provided, that this provision shall only apply for the duration of the Development Period;

5.9.2 every Member, including the Developer, in person or by proxy and entitled to vote, shall have 1 (one) vote for each Unit registered in his name;

5.9.3 save as expressly provided for in these presents, no person other than a Member duly registered and who shall have paid every levy and other sum, if any, which shall be due and payable to the Company in respect of or arising from his membership, and who is not under suspension, shall be entitled to be present or to vote on any question, either personally or by proxy, at any general meeting;



- 5.9.4 a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll (before or in the declaration of the result of a show of hands) is demanded by the Chairman or Members, as referred to in Section 63(4) to (6) of the Act, and unless a poll is so demanded, a declaration by the Chairman that a resolution has, on a show of hands, been carried or carried unanimously, or by a particular majority of negative, and an entry to that effect in the book containing the minutes of the proceedings of the Company, shall be conclusive evidence of the fact, without proof of the number or the proportion of the votes recorded in favour of or against such resolution. The demand for a poll may be withdrawn. Furthermore:
- 5.9.4.1 if a poll is duly demanded, it shall be taken in such manner as the Chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. A scrutineer shall be elected to determine the result of the poll; and
- 5.9.4.2 a poll demanded on the election of a Chairman or on a question of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the Chairman of the meeting directs. The demand for a poll shall not prevent the continuation of a meeting for the transaction of any business other than the question upon which the poll has been demanded;
- 5.9.5 every resolution and every amended resolution proposed for adoption by the general meeting and the Annual General Meeting, must be seconded at the meeting, and if not so seconded, shall be deemed not to have been proposed;
- 5.9.6 an ordinary resolution (that is a resolution other than a special resolution) or the amendment of an ordinary resolution shall be

carried on a single majority of all votes cast as contemplated in this Article 5.8.1;

- 5.9.7 unless any Member present in person or by proxy shall, before closure of the meeting, have objected to any declaration made by the Chairman of the meeting as to the result of any voting at the meeting, whether by show of hands or otherwise, or the propriety or validity of the procedure at such meeting, such declaration by the Chairman shall be deemed to be a true and correct statement of the voting, and the meeting shall in all aspects be deemed to have been properly and validly constituted and conducted, and an entry in the minutes to the effect that any motion has been carried or defeated, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the votes so recorded.

#### Joint voters

- 5.10 If a Unit is registered in the name of more than one person, then all such co-owners shall jointly have 1 (one) vote.
- 5.11 When two or more persons are entitled to exercise one vote jointly, that vote shall be exercised only by a person (who may or may not be one of them) jointly appointed by them as their proxy.
- 5.12 Notwithstanding Article 5.11, where 2 (two) or more persons are entitled to exercise 1 (one) vote jointly, any one of them may demand a poll.

## **6. DIRECTORS AND OFFICERS**

### 6.1 Directors

- 6.1.1 The Board of Directors of the Company shall consist of not less than 3 (three) but no more than 5 (five) Directors.

- 6.1.2 A Director shall be an individual but need not himself be a Member of the Company subject thereto that the majority of Directors shall also be Members, and the Managing Agent or its employee(s) or an employee of the Company may not be a Director unless he is also a Member. A Director, however, by accepting his appointment to office as such, shall be deemed to have agreed to be bound by all the provisions of these presents.
- 6.1.3 The Board of Directors shall during the Development Period consist of not more than 3 (three) nominees of the Developer. Any other Directors to be appointed to office shall be elected by the Members and the Developer at a general meeting according to the voting rights conferred upon them by Article 5.9.
- 6.1.4 Nominations by Members for the election of Directors at any Annual General Meeting shall be given in writing, accompanied by the written consent of the person nominated, so as to be received at the domicilium of the Company not later than 48 (forty eight) hours before the meeting: Provided that Directors shall also be capable of being elected by way of nominations with the consent of the nominee given at the meeting itself, should insufficient written nominations be received to comply with this Article.
- 6.1.5 The Developer shall on registration of the Company appoint the first Directors.
- 6.1.6 Alternate Directors
- 6.1.6.1 The Directors may appoint another person, whether or not he shall be the owner of a Unit, to act as an alternate Director during the absence or inability to act of a Director.

6.1.6.2 An alternate Director shall have the powers and be subject to the duties of a Director.

6.1.6.3 An alternate Director shall cease to hold office if the Director whom he replaces, ceases to be a Director, or if the alternate's appointment is revoked by the Directors.

## 6.2 Removal and Rotation of Directors

Save as set out in Article 6.3 below, and save for the 3 (three) Directors appointed by the Developer in terms of Article 6.1.3 above, each Director shall continue to hold office as such from the date of his commencement to office until the next Annual General Meeting following his said appointment, at which meeting each Director shall be deemed to have retired from office as such but will be eligible for re-election to the Board of Directors at such meeting.

## 6.3 A Director shall be deemed to have vacated his office as such if:

6.3.1 he resigns his office by notice in writing to the Company;

6.3.2 he has been disqualified to act as a Director in terms of the provisions of Sections 69 of the Act;

6.3.3 he has been removed from office under circumstances in terms of Section 71 of the Act;

6.3.4 he becomes of unsound mind; and

6.3.5 he is absent from more than 2 (two) meetings of the Directors without leave having been granted to him.

#### 6.4 Filling Vacation of Office

Upon any vacancy occurring in the Board of Directors prior to the next annual general meeting, the vacancy in question shall be filled by the person nominated by those remaining for the time being on the Board of Directors, provided that if the Director who vacates his office as aforesaid was a nominee of the Developer, the Developer shall be entitled to nominate a Director in his stead.

#### 6.5 Chairman and Vice-Chairman

6.5.1 During the Development Period the Developer shall have the right to appoint the Chairman and Vice-Chairman of the Company.

6.5.2 After the Development Period has lapsed, the Directors shall, within 14 (fourteen) days after each annual general meeting, appoint a Chairman and Vice-Chairman, who shall hold their respective offices until the annual general meeting next after their said appointments, provided that the office of Chairman or Vice-chairman shall ipso facto be vacated by a Director holding such office upon him ceasing to be a Director for any reason. No one Director shall be appointed to more than 1 (one) of the aforesaid offices. In the event of any vacancy occurring in either of the aforesaid offices at any time, the Board of Directors shall immediately appoint one of their number as a replacement in such office.

#### 6.6 Chairman to Preside Meetings

Except as otherwise provided, the Chairman shall preside at all meetings of the Board of Directors and all general meetings of Members and, in the event of his not being present within 5 (five) minutes of the scheduled time for the start of the meeting or in the event of his inability or unwillingness to

act, the Vice-Chairman shall act in his stead, or failing the Vice-Chairman, a Chairman appointed for the meeting.

## **7. POWERS OF THE BOARD OF DIRECTORS**

7.1 The duties and powers of the Company shall, subject to the provisions of the Act and the Memorandum of Incorporation and to any restriction imposed or direction given at a general meeting of the Members, be performed or exercised by the Directors holding office in terms of this Memorandum of Incorporation.

7.2 The authority of the Company's Board of Directors to manage and direct the business and affairs of the Company, as set out in Section 66(1), is limited or restricted as follows:

7.3 Powers of Directors

7.3.1 The Directors will have the following powers:

7.3.1.1 Subject to the express provisions hereof and such rules as may have been made by the Company in a meeting of Members or as may be made by the Directors from time to time, the Directors shall have full powers in the management and direction of such business and affairs, including the right of appointment and dismissal of the Managing Agent, and may exercise all such powers of the Company and do all such acts on behalf of the Company, if the Act or this Memorandum of Incorporation does not require such power or act to be exercised by the Company at a meeting of the Members.

- 7.3.1.2 Save as specifically provided in these presents, the Directors shall at all times have the right to engage, on behalf of the Company, the services of accountants, auditors, attorneys, advocates, architects, engineers and Managing Agents, and any other professional firm or person or other employees whatsoever for any reason deemed necessary by the Directors, and on such terms as the Directors shall decide –
- 7.3.1.3 to appoint for and on behalf of the Company such agents and employees as they deem fit in connection with –
- 7.3.1.3.1. the control, management and administration of the Housing Development Scheme; and
- 7.3.1.3.2. the exercise and performance of any or all of the powers and duties of the Company,
- 7.3.1.4 to delegate to one or more of the Directors such of their powers and duties as they may deem fit, and at any time to revoke such delegation;
- 7.3.1.5 to make rules for the control, use, safety, cleanliness and aesthetic landscaping of the Common Property and to determine by rule and bylaw from time to time promulgated, the security, vegetation, continuity, parking, signage and advertising, exterior finishes and maintenance;
- 7.3.1.6 to open and operate a current account and savings account with a banking institution;

- 7.3.1.7 to purchase, hire or otherwise acquire movable property for use in fulfilling the duties imposed on the Directors in terms of this Memorandum of Incorporation;
- 7.3.1.8 to liaise with the relevant local authority regarding any matter falling under the ambit of this Memorandum of Incorporation, or on behalf of any Member;
- 7.3.1.9 to utilise the facilities and equipment of the Company for purposes of providing a maintenance service in respect of the individual Unit of any Member relating to such Member's Unit, against a remuneration to be determined by the Directors from time to time;
- 7.3.1.10 to ensure that the Members adhere to the provisions of this Memorandum of Incorporation; and
- 7.3.1.11 to do all things reasonably necessary for the enforcement, management, control and administration devolving upon the Directors in terms of this Memorandum of Incorporation, as more fully set out in this Article.
- 7.3.1.12 No document signed on behalf of the Company shall be valid and binding unless it is signed by a Director and the Managing Agent, referred to in Article 18 or by 2 (two) Directors.
- 7.3.1.13 The Directors are hereby empowered to establish for administrative expenses funds sufficient in the opinion of the Directors for the upkeep, control, management and administration required to be performed by the Directors in terms of this Memorandum of Incorporation and for the apposition of such movables as may be required for



purposes of providing the services to be rendered in terms hereof, or for the discharge of any duty imposed upon the Directors in terms hereof.

7.3.1.14 The Board of Directors shall have the right to co-opt on the Board any person or persons chosen by it. A co-opted Director need not necessarily be a Member of the Company.

7.3.1.15 The Directors will be entitled to, on behalf of the Company taking over the activities of the body corporate as stated in Article 2.2, exercise the right to make rules conferring exclusive use and enjoyment of parts of the Common Property as determined in Section 27A of the Sectional Titles Act.

## **8. DUTIES OF DIRECTORS**

Notwithstanding any duties stipulated or implied by the Act, the Directors shall perform the following functions entrusted to them:

- 8.1 Do all things reasonably necessary for the control, management and administration of the Housing Development Scheme in terms of the powers conferred upon them by this Memorandum of Incorporation and the Act.
- 8.2 Do all things reasonably necessary for the enforcement of this Memorandum of Incorporation.
- 8.3 Be responsible for the administration, control, management and services required in the fulfilment of the objects of the Company as stipulated in Article 2.2, and manage and control the business and affairs of the Company.

- 8.4 Approve occupiers of Units in the Housing Development Scheme in terms of this Article 20.
- 8.5 Appoint Managing Agent in terms of Article 18.

#### Insurance

- 8.6 Be responsible for the following in terms of insurance:
  - 8.6.1 At the first meeting of the Directors, or as soon as possible thereafter, and on an annual basis, Directors shall take steps to insure the buildings and all improvements to the Property, to the full replacement value thereof, subject to negotiation of such excess, premiums and insurance rates as, in the opinion of the Directors, are most beneficial to the Members, against –
    - 8.6.1.1 fire, lighting and explosion;
    - 8.6.1.2 riot, civil commotion, strikes, lock-outs, labour disturbances or malicious persons acting on behalf of or in connection with any political organisation;
    - 8.6.1.3 storm, tempest and flood;
    - 8.6.1.4 earthquake;
    - 8.6.1.5 aircraft and other aerial devices or articles dropped therefrom;
    - 8.6.1.6 bursting or overflowing of water tanks, apparatus or pipes;
    - 8.6.1.7 impact by any road vehicle, horses or cattle with any of the said buildings or improvements;

- 8.6.1.8 housebreaking or any attempt thereat;
  - 8.6.1.9 loss of occupation or loss of rent in respect of any of the above risks; and
  - 8.6.1.10 such other perils or dangers as the Directors or any holder of first mortgage bonds over not less than 25% (twenty five percent) in number of the Units in the scheme, may deem appropriate.
- 8.6.2 The Directors shall at all times ensure that in the insurance policy referred to in Article 8.6.1 above –
- 8.6.2.1 the replacement value of each Unit is specified (excluding the Member's interest in the land):
    - 8.6.2.1.1. initially, but subject to the provisions of this Article 8.6.2.1.3, in accordance with the Directors' estimate of such value;
    - 8.6.2.1.2. after the first Annual General Meeting, but subject to the provisions of this Article 8.6.2.1.3, in accordance with the schedule of values as approved in terms of this Article 8.6.3; or
    - 8.6.2.1.3. as required at any time by any Member in terms of this Article 8.6.4;
  - 8.6.2.2 any "average" clause is restricted in its effect to individual Units and does not apply to the building as a whole;
  - 8.6.2.3 a clause is included in terms of which the policy is valid and enforceable by any mortgagee against the insurer,

notwithstanding any circumstances whatsoever which would otherwise entitle the insurer to refuse to make payment of the amount insured, unless and until the insurer on not less than 30 (thirty) days' notice to the mortgagee shall have terminated such insurance.

8.6.3 Before every Annual General Meeting, the Directors shall cause to be prepared schedules reflecting their estimate of –

8.6.3.1 the replacement value of the buildings and all improvements to the Property; and

8.6.3.2 the replacement value of each Unit (excluding the owner's interest in the land), the aggregate of such values of all Units being equal to the value referred to in Article 8.6.3.1 above,

and such schedules shall be tabled at the annual general meeting for consideration and approval in terms of the articles of the Memorandum of Incorporation dealing with Annual General Meetings.

8.6.4 Any Member may at any time increase the replacement value as specified in the insurance policy in respect of his Unit: provided that such Member shall be liable for payment of the additional insurance premium and shall forthwith furnish the Company with proof thereof from the insurer.

8.6.5 The Directors shall, on the written request of a mortgagee and satisfactory proof thereof, record the cession by any Member to such mortgagee of the Member's interest in the application of the proceeds of the insurance policies effected in terms of this Article 8.6.1.

- 8.7 At the first meeting of the Directors, or as soon as possible thereafter, the Directors shall take all reasonable steps –
- 8.7.1 to insure the Members and the Directors, and to keep them insured against liability in respect of:
- 8.7.1.1 death, bodily injury or illness; and
- 8.7.1.2 loss of, or damage to, property,  
occurring in connection with the Property, for a sum of liability of not less than one hundred thousand rand, which sum may be increased from time to time as directed by the Meeting in general meeting; and
- 8.7.2 to procure to the extent, if any, as determined by the Members of the Company in a general meeting, a fidelity guarantee in terms of which shall be refunded any loss of moneys belonging to the Company or for which it is responsible, sustained as a result of any act of fraud or dishonesty committed by any insured person, being any person in the service of the Company and all Directors and persons acting in the capacity of Managing Agents of the Company.
- 8.8 The Members may by special resolution direct the Directors to insure against such other risks as the Members may determine.
- 8.9 Each Member is responsible for any excess payment in respect of his Unit payable in terms of an insurance contract entered into by the Company; provided that Members may by special resolution determine that the Company is responsible for excess payments in respect of specified damage.

## Improvements

### 8.10 Luxurious improvements

The Directors may, if the Members by unanimous resolution so decide, effect or remove improvements of a luxurious nature on the Property.

### 8.11 Non-luxurious improvements

8.11.1 Should the Directors wish to effect or remove any improvements to the Property, other than luxurious improvements referred to in this Article 8.10 they shall first give written notice of such intention to all the Members and such notice shall:

8.11.1.1 indicate the intention of the Directors to proceed with the improvement or removal thereof upon the expiry of a period of not less than 30 (thirty) days calculated from the date of posting such notice; and

8.11.1.2 provide details of the improvement or removal thereof as to:

8.11.1.2.1. the costs thereof;

8.11.1.2.2. the manner in which it is to be financed and the effect upon levies paid by the Members; and

8.11.1.2.3. the need, desirability and effect thereof.

8.11.2 The Directors shall at the written request of any Member convene a special general meeting in order to discuss and to deliberate on the proposals contained in the notice referred to in Article 8.11.1,

at which meeting the Members may approve, with or without amendments, such proposals by way of special resolution.

- 8.11.3 In the event of such a special general meeting being called, the Directors shall not proceed with their proposals until the holding of such meeting, whereupon they shall be bound by any special resolution ensuing therefrom.
- 8.11.4 Notwithstanding the provisions of Articles 8.11.1 and 8.11.2, the Directors shall, if so required in writing by a majority of Members, procure the installation and maintenance in good working order, at the Company's cost, of separate meters to record the consumption of electricity, water and gas in respect of each individual Unit and the Property.
- 8.11.5 If and for so long as no separate meters have been installed in terms of Article 8.11.4, the contribution payable by each Member in respect of electricity, water and gas shall be calculated in accordance with the provisions of Article 4.11.

## **9. DIRECTORS' MEETINGS**

- 9.1 A decision that could be voted on at a meeting of the Board of Directors may instead be adopted by written consent of a majority of the Directors given in person, or by electronic communication, provided that each Director has received notice of the matter to be decided.
- 9.2 The Directors have the right to demand that a meeting of the Board be held, as set out in Section 73(1), if such right is exercised by at least 25% (twenty five per cent) of the Directors.

- 9.3 The authority of the Board of Directors to conduct a meeting entirely by electronic communication, or to provide participation by electronic communication, as set out in Section 73(3) is not limited or restricted by this Memorandum of Incorporation.
- 9.4 The authority of the Board of Directors to determine the manner and form of providing notice of its meetings, as set out in Section 73(4), subject to the following provisions:
- 9.4.1 Any mortgagees holding a first mortgage bond over any Unit(s) shall, if he so requires of the Directors in writing, be entitled to receive reasonable notice of all the meetings of Directors.
- 9.4.2 The nominee of any first mortgagee shall be entitled to attend and speak at all meetings of the Directors but shall not, in his capacity as such, be entitled to vote thereat.
- 9.4.3 A Member shall be entitled to attend and speak at any meeting of the Directors, but shall not in his or her capacity as, be entitled to vote thereat.
- 9.5 The authority of the Board of Directors to proceed with a meeting despite failure or defect in giving notice of the meeting as set out in Section 73(5) is not limited or restricted by this Memorandum of Incorporation.
- 9.6 The quorum necessary for the holding of any meeting of the Directors shall be 3 (three) present personally, provided that during the Development Period, the presence of at least 2 (two) of the nominees of the Developer shall be necessary at all meetings of the Directors in order to form a quorum. Any resolution of the Board of Directors shall be carried on a simple majority of all votes cast. In the case of equality of votes for and against any resolution, the resolution shall be deemed to have been defeated. If the number of Directors falls below the number necessary to form a quorum, the remaining Director or Directors may continue to act, but



only for the purpose of appointing or co-opting additional Directors to make up a quorum, or for the purpose of convening a general meeting of Members.

- 9.7 Each Director has 1 (one) vote on a matter before the board, and all matters at any meeting of the Directors shall be determined by a majority of the votes of the Directors present and voting.
- 9.8 The Chairman will not have a casting or a deciding vote in the case of a tied vote.

#### Minutes

- 9.9 The Directors shall –
- 9.9.1 keep minutes of their proceedings;
  - 9.9.2 cause minutes to be kept of all meetings of the Company in a minute book of the Company kept for the purpose; and
  - 9.9.3 include in the minute book of the Company a record of every unanimous resolution, special resolution and any other resolution of the Company.
- 9.10 The Directors shall keep all minute books in perpetuity.
- 9.11 On the written application of any Member or Registered Mortgagee of a Unit, the Directors shall make all minutes of their proceedings and the minutes of the Company available for inspection by such Member or mortgagee.

## **10. DIRECTORS' REMUNERATION AND FINANCIAL ASSISTANCE**

- 10.1 Unless otherwise determined by a special resolution of the Members, Directors who are Owners shall not be entitled to any remuneration in respect of their services as such, provided that the Company shall reimburse Directors for all disbursements and expenses actually and reasonably incurred by them in carrying out their duties and exercising their powers.
- 10.2 The Company may remunerate Directors who are not Owners at such rate as may be agreed upon by the Company by means of special resolution, and such Directors shall further be entitled to have refunded to them any disbursements and expenses incurred by them in the circumstances envisaged in the proviso to Article 10.1, provided always that an alternate Director appointed by the Directors, who is not an Owner, shall claim his remuneration, if any, from the Director whom he replaced and not from the Company, unless the Company has been instructed in writing by such Director to pay any portion of his remuneration to such alternate Director.
- 10.3 The Board of Directors does not have the authority as set out in Section 45 of the Act, to authorise the Company to provide financial assistance to a Director or prescribed officer or other person referred to in Section 45(2) or to a Member.

## **11. INDEMNIFICATION OF DIRECTORS AND INSURANCE**

- 11.1 The authority of the Company to advance expenses to a Director or to indemnify a Director, in respect of legal proceedings, as set out in Section 78(4), is not limited or restricted by this Memorandum of Incorporation.
- 11.2 The authority of the Company to indemnify a Director in respect of any liability, as set out in Section 78(5), is not limited or restricted by this Memorandum of Incorporation.

- 11.3 The authority of the Company to purchase insurance to protect a Company, or a Director, as set out in Section 78(7), is not limited or restricted by this Memorandum of Incorporation.

## **12. COMMITTEES OF THE BOARD**

- 12.1 The authority of the Board of Directors to appoint committees, and to delegate to any such committee any authority of the Board, as set out in Section 72(1), and to include in any such committee persons who are not Directors, as set out in Section 73(2)(a), is not limited or restricted by this Memorandum of Incorporation.
- 12.2 The authority of a committee appointed by the Board of Directors, as set out in Section 72(2)(b) and (c), is not limited or restricted by this Memorandum of Incorporation.

## **13. ACCOUNTING RECORDS**

- 13.1 Before every Annual General Meeting, the Directors shall cause to be prepared an itemised estimate of the anticipated income and expenses of the Company during the ensuing financial year, which estimate shall be tabled at the annual general meeting for consideration.
- 13.2 The estimate of expenses referred to in Article 13.1 shall include a reasonable provision for contingencies and the maintenance of the Common Property.
- 13.3 The Directors shall cause to be prepared, and shall table at every Annual General Meeting, for consideration, a financial statement in conformity with generally accepted accounting practice, and in compliance with Sections 29 and 30 of the Act, which statements shall fairly present the state of affairs of the Company and its finances and transactions, as at the end of the financial year concerned.

- 13.4 The financial statements shall include information and notes pertaining to the proper financial management by the Company, including:
- 13.4.1 an analysis of the periods of debts and the amounts due in respect of levies, special levies and other contributions;
  - 13.4.2 an analysis of the periods and the amounts due, owing by the Company to the creditors and in particular to any public or local authority in respect of rates, taxes and charges for consumption or services, including but not limited to, water, electricity, gas, sewerage and refuse removal; and
  - 13.4.3 the expiry dates of all insurance policies.
- 13.5 The Directors shall further cause to be prepared and shall lay before every Annual General Meeting a report signed by the Chairman reviewing the affairs of the Company during the past year, for consideration by the Members.
- 13.6 The Directors shall cause copies of the schedules, estimate, audited statement and report referred to in this Article 13 and Article 8.6.3 to be delivered to each Member, and to any Registered Mortgagee which has advised the Company of its interest, at least 14 (fourteen) days before the date of the Annual General Meeting at which they are to be considered.
- 13.7 Delivery under Article 13.6 shall be deemed to have been effected if the documents referred to are sent by prepaid post addressed to the Member at his domicile referred to in Article 15, and to any Registered Mortgagee, as aforesaid, at the address of such mortgagee and as reflected in the records of the Company.
- 13.8 The accounting records shall be kept or be accessible from the registered office of the Company.

## **14. ANNUAL FINANCIAL STATEMENTS**

- 14.1 The Directors shall from time to time, in accordance with Sections 29 and 30 of the Act, cause to be prepared, and submit to the Company, for consideration at the Annual General Meeting, such annual financial statements as referred to in these sections.
- 14.2 A copy of any annual financial statements to be submitted to the Company, and to be considered at the Annual General Meeting, shall not less than 21 (twenty one) days before the date of the meeting be sent to every person who is entitled thereto as stated in Section 31.
- 14.3 Regardless of whether the Company is required to do so by the Act, the annual financial statements of the Company will be audited annually by the Auditors appointed in terms of Article 3.1.

## **15. DOMICILIUM CITANDI ET EXECUTANDI**

- 15.1 The address of the Company constituting its domicilium citandi et executandi shall be as is registered in terms of the notice of incorporation or such amendments thereof, registered with the Companies and Intellectual Property Commission (“CIPC”), subject to the following:
- 15.1.1 Such address shall be situated in the magisterial district in which the Housing Development Scheme is situated and shall be the address of the Chairman or other resident Director duly appointed at a general meeting, or in the magisterial district in which the offices of any duly appointed Managing Agent are situated, being the address of such Managing Agent.
- 15.1.2 No change of such address shall be effective until written notification thereof has been received by CIPC.

15.1.3 The Directors shall give notice to all Members of any change of such address.

15.2 The domicilium citandi et executandi of each Member shall be the address of the Unit registered in his name, provided that such Member shall be entitled from time to time to change the said domicilium, but that any new domicilium selected shall be situate in the Republic, and that the change shall only be effective on receipt of written notice thereof by the Company at its domicilium.

## **16. DEPOSIT AND INVESTMENT OF FUNDS**

16.1 The Directors shall cause all moneys received by the Company to be deposited to the credit of an account or accounts with a registered commercial bank in the name of the Company and, subject to any direction given or restriction imposed at a general meeting of the Company, such moneys shall only be withdrawn for the purpose of payment of the expenses of the Company or investment in terms of Article 16.3.

16.2 The Directors may authorise the Managing Agent to administer and operate the accounts referred to in Articles 16.1 and 16.3; provided that where the Managing Agent is an estate agent, as defined in the Estate Agency Affairs Act 112 of 1976, the Directors may authorise such Managing Agent to deposit moneys contemplated in Article 16.1 in a trust account, as contemplated in Section 32 (3) of the Estate Agency Affairs Act, 1976, which moneys shall only be withdrawn for the purposes contemplated in Article 16.1.

16.3 Any funds not immediately required for disbursement, may be invested in a savings or similar account with any bank approved by the Directors from time to time.

16.4 Interest on moneys invested shall be used by the Company for any lawful purpose.

**17. NO REFUNDS OR DISTRIBUTION OF PROFITS OR ASSETS**

- 17.1 The Members shall not be entitled to a refund of contributions lawfully levied upon them and duly paid by them.
- 17.2 No portion of the profits or gains of the Company shall be distributed to any Member or any other person except upon destruction or deemed destruction of the building, or where such profit or gain is of a capital nature.

**18. APPOINTMENT, POWERS AND DUTIES OF MANAGING AGENT**

- 18.1 The Directors may from time to time, and shall if required by a Registered Mortgagee of 25% (twenty five per cent) of the Units or by the Members of the Company in a general meeting, appoint in terms of a written contract a Managing Agent to control, manage and administer the Property and the obligations to any public or local authority by the Company on behalf of the Members, and to exercise such powers and duties as may be entrusted to the Managing Agent, including the power to collect levies and to appoint a supervisor or caretaker.
- 18.2 A Managing Agent is appointed for an initial period of 1 (one) year and thereafter such appointment shall automatically be renewed from year to year, unless the Company notifies the Managing Agent to the contrary; provided that notice of termination of the contract may be given by the Directors in accordance with a resolution taken at a Directors' meeting or an ordinary resolution taken at a general meeting.
- 18.3 The Directors shall ensure that the appointment contract of all Managing Agents includes a provision to the effect that if he is in breach of any of the provisions of his contract, or if he is guilty of conduct which at common law would justify the termination of a contract between master and servant, the Directors may, without notice, cancel such contract of appointment, and

that the Managing Agent shall have no claim whatsoever against the Company or any of its Members as a result of such cancellation.

- 18.4 The contract with the Managing Agent shall further provide for the appointment to be revoked, and such Managing Agent shall cease to hold office, if –
- 18.4.1 where the Managing Agent is a juristic person, an order is made for its provisional or final liquidation or, where the Managing Agent is a natural person, he applies for the surrender of his estate as insolvent or his estate is sequestrated either provisionally or finally or, where the Managing Agent is a company, it is placed under business rescue; or
- 18.4.2 the Managing Agent is convicted of an offence involving an element of fraud or an element of dishonesty or, where the Managing Agent is a company or a close corporation, any of its directors or members is convicted of an offence involving an element of fraud or an element of dishonesty, or;
- 18.4.3 a special resolution of the Members of the Company is passed to that effect; provided that in such event the Managing Agent so removed from office shall not be deprived of any right he may have to claim compensation or damages for breach of contract.
- 18.5 The Managing Agent shall keep full records of his administration and shall report to the Company and all holders of registered sectional mortgage bonds who have notified the Company of their interest in terms of Article 9.4 of all matters, which, in his opinion detrimentally affect the value or amenity of the Property and any of the sections.
- 18.6 The Directors shall give reasonable prior notice to the Managing Agent of all meetings of the Directors and he may with the consent of the Directors be present thereat.



18.7 The Directors shall from time to time furnish to the Managing Agent copies of all minutes of the Directors and of the Company.

## **19. DETERMINATION OF DISPUTES BY ARBITRATION**

19.1 Any dispute between the Company and a Member or between Members arising out of or in connection with or related to the Act, the Sectional Titles Act, the Memorandum of Incorporation, or the conduct rules, save where an interdict or any form of urgent or other relief may be required or obtained from a Court having jurisdiction, shall be determined in terms of this Article 19.

19.2 If such a dispute or complaint arises, the aggrieved party shall notify the other affected party or parties in writing, and copies of such notification shall be served on the Directors and the Managing Agents, if any, and should the dispute or complaint not be resolved within 14 (fourteen) days of such notice, either of the parties may demand that the dispute or complaint be referred to arbitration; provided that, if a Member declares a dispute with the Company, it shall be sufficient notice if notification is served on the Directors and Managing Agents, if any, and such Member will not be required to serve notice on each of the other Members.

19.3 Having regard to the nature and complexity of the dispute or complaint and to the costs which may be involved in the adjudication thereof, the parties shall appoint an arbitrator who shall be an independent and a suitably experienced and qualified person as may be agreed upon between the parties to the dispute.

19.4 If the parties cannot agree as to the arbitrator to be appointed in terms of Article 19.3 within three days after the arbitration has been demanded, the chief Registrar of Deeds or his nominee shall upon written application, and subject to payment of the prescribed fee, in writing appoint an arbitrator within 7 (seven) days after he has been required to make the appointment so that the arbitration can be held and concluded without delay.

- 19.5 Arbitration shall be held informally or otherwise determined by the arbitrator. The arbitrator shall have the right to demand that the party demanding the arbitration furnish the arbitrator with security for payment of the costs of the arbitration in such amount and form as the arbitrator may determine, failing which the arbitration shall not proceed. Where possible, the arbitration shall be concluded within 21 (twenty one) days after the matter has been referred to arbitration in terms of Article 19.2 or security for costs has been furnished.
- 19.6 The arbitrator shall make his award within 7 (seven) days from the date of the completion of the arbitration and shall, in making his award, have regard to the principles laid down in terms of this Article 19. The arbitrator may determine that the costs of the arbitration be paid by any one of the disputing parties or any of them jointly, or in such shares as he may determine, and as he in his discretion may deem appropriate having regard to the outcome of the arbitration.
- 19.7 The decision of the arbitrator shall be final and binding and may be made an order of the High Court upon application of any party to or affected by the arbitration.
- 19.8 Notwithstanding that the Arbitration Act 42 of 1965 makes no provision for joinder of parties to an arbitration without their consent thereto, should a dispute arise between the Company and more than one Member or between a number of Members arising out of the same or substantially the same cause of action, or where substantially the same order would be sought against all the parties against whom the dispute has been declared, such parties shall be automatically joined in the arbitration by notice thereof in the original notice of dispute given in terms of Article 19.2.

## 20. TRANSFER AND OCCUPATION OF UNITS

### Transfer of Units

- 20.1 Should a Unit be transferred, at any time after the transfer from the Developer, the Company is entitled to an amount equal to 3,5% (three comma five per cent) of the net purchase price payable by the purchaser of the Unit to the Owner thereof.
- 20.2 If the Unit is bequeathed, donated, exchanged or otherwise alienated, at any time after transfer from the Developer, the said 3,5% (three comma five per cent) of the then reasonable market value of the Unit will be paid to the Company.
- 20.3 In the event of a dispute regarding the said reasonable market value referred to in Article 20.2, the value of the Unit will be determined by an expert who is a registered valuer agreed to between the Company and the Owner of the Unit and failing such agreement within 7 (seven) days after any party has requested the other in writing to agree on the appointment, appointed by the principal for the time being of the South African Institute of Valuers. The said valuer will act as an expert and not as an arbitrator and his decision will be final and binding upon the parties and not subject to appeal. The expert will be entitled to order one of the parties to pay his costs or each party to pay a specified proportion of his costs.
- 20.4 For purposes hereof the net purchase price means the gross purchase price minus agent's commission.
- 20.5 The Unit may not be transferred unless a certificate is produced by the Company to the effect that the said amount has been paid to it or that payment thereof has been guaranteed to the satisfaction of the Company.

- 20.6 It is recorded that Articles 20.1 to 20.5 are not applicable when the Unit is bequeathed, donated, exchanged or otherwise alienated to the spouse of the Owner.
- 20.7 Should the Owner of a Unit be a company, close corporation or trust and the shareholding, members' interest or beneficial interest in the company, close corporation or trust, as the case may be, is sold or otherwise disposed of, the Company shall be entitled to an amount equal to 3,5% (three comma five per cent) of the net purchase price payable by the purchaser of the shareholding, members' interest or beneficial interest, as the case may be, to the Owner thereof.
- 20.8 If the shareholding, members' interest or beneficial interest, as the case may be, is bequeathed, donated, exchanged or otherwise alienated the said 3,5% (three comma five per cent) of the then reasonable market value of the shareholding, members' interest or beneficial interest will be paid to the Company.
- 20.9 In the event of a dispute regarding the said value, the value of the shareholding, members' interest or beneficial interest will be determined by an expert who is the auditor or accounting officer of the company, close corporation or trust, as the case may be. The said auditor or accounting officer will act as an expert and not as an arbitrator, and his decision will be final and binding upon the parties and not subject to appeal. The expert will be entitled to order one of the parties to pay his costs or each party to pay a specified proportion of his costs.
- 20.10 For purposes of this clause the net purchase price means the gross purchase price minus agent's commission.
- 20.11 The shareholding, members' interest or beneficial interest may not be transferred or ceded unless a certificate is produced by the Company to the effect that the said amount has been paid to it or that payment thereof has been guaranteed to the satisfaction of the Company.

- 20.12 It is recorded that Articles 20.7 to 20.11 are not applicable when the shareholding, members' interest or beneficial interest is bequeathed, donated, exchanged or otherwise alienated to the spouse of any shareholder, member or trust beneficiary of the Purchaser, as defined in the contract.
- 20.13 The Company will not be entitled to the 3,5% (three comma five per cent) of the net purchase price payable by the purchaser of the Unit if the Unit is sold by way of a sale in execution, if the unit is sold by a financial institution following a sale in execution, or is sold by the Owner with the consent of a financial institution in order to be relieved of his responsibilities under the bond (so-called distress sales).
- 20.14 Subject to Articles 20.1 to 20.13, Members are only allowed to use the sale agreements as approved by the Company in the event that a Unit is intended to be sold by the Member.

#### Qualifying occupants and occupation of units

- 20.15 All persons, in the sole discretion of the Directors, intending to occupy a Unit in the Housing Development Scheme, will be subject to an assessment as determined from time to time by the Directors, which assessment procedure will be completed in accordance with the provisions of the Older Persons Act 13 of 2006.
- 20.16 It is the intention of the Developer that only persons 50 (fifty) years and older shall occupy the Units relating to the Housing Development Scheme. If the occupier is married or deemed to be in a permanent life partnership at the date of occupation and any one of the spouses or partners qualifies in terms of this Article, both parties shall qualify.
- 20.17 The full 100% (one hundred per cent) of the total number of Units with regard to the Housing Development Scheme shall be made available for occupation to retired persons only, as defined in the Housing Development

Schemes for Retired Persons Act 65 of 1988. This means that should a Unit be sold to a person or persons younger than 50 (fifty) years or to a company, close corporation or trust, the Unit may only be occupied by retired persons as stipulated in Article 20.15.

20.18 The Unit may not be used or occupied by more than 2 (two) persons at any time, unless the prior written consent has been obtained by the Company.

20.19 The care centre service provider may, with the approval of the Directors, for its own account, provide medical care to occupants in Units which are leased by the said care centre service provider and may sublet to such occupants who require medical care, provided that such approval is granted in the sole discretion of the Directors.

20.20 In the event that a Member intends to let his Unit, such Member is compelled to use the lease agreements as provided and approved by the Company from time to time.

## **21. FRAIL CARE CENTRE**

21.1 The frail care centre to be made available at the Housing Development Scheme will be managed by service providers appointed on the following basis:

21.1.1 For the duration of the Development Period, the Developer will appoint the service providers on a year to year basis;

21.1.2 After the Development Period has expired, the Directors will appoint the service providers on a year to year basis.